

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JUAN PADILLA	:	CIVIL ACTION
	:	
v.	:	
	:	
TEMPLE UNIVERSITY HOSPITAL/	:	
PSYCHE WARD CRISIS UNIT	:	99-4274

MEMORANDUM AND ORDER

J. M. KELLY, J. **MARCH** , 2000

Presently before the Court is an unopposed Motion to Dismiss filed by the Defendant, Temple University Hospital (“Temple”) pursuant to Federal Rule of Civil Procedure 12(b)(1).¹ Temple argues that the Court has neither federal question nor diversity jurisdiction over the instant matter. For the following reasons, the Defendant’s motion is granted.

I. BACKGROUND

On August 24, 1999, the Plaintiff, Juan Padilla (“Padilla”), filed a motion to proceed in forma pauperis. The motion was granted on August 26, 1999 and Temple was served with the Complaint.² The Complaint seems to set forth a cause of action for defamation resulting from

¹ The instant motion was originally filed as a Motion to Remand to State Court. A review of the case revealed, however, that the case had not originally been filed in state court, and thus could not be remanded thereto. See generally 28 U.S.C. § 1447(c) (1994). Therefore, by Order dated March 10, 2000, this Court directed the motion be treated as a motion to dismiss pursuant to Rule (12)(b)(1).

² Temple notes in its motion that it was and still has not been provided with a full copy of the Complaint, but rather was served with a one-page document with text missing from the bottom. The Court’s review of the file reveals that the Defendant received the same document as was filed with this Court. While the Complaint appears to be incomplete, the allegations made therein are sufficient for the Court to discern the essence of Padilla’s cause of action and thus adequate to decide this motion.

Temple's institutionalization of Padilla. Specifically, the Complaint states:

I have filed a complaint and civil demand against the following above mentioned party being: Temple University Hospital/Crisis Unit, for certain medical fictitious created and amended records not being released by both Department of Records and Crisis Unit Departments at Temple University Hospital which were actually requested by me: Mr. Juan Padilla, who happens to be a former word processing specialists [sic] attending full-time as a student for a period of six months so that I can proceed to appeal this case and civil action demand against Temple University Hospital, whom has damaged both name and credibility: as well as public image as a respectful individual, because, of a recommendation which led me to be institutionalized by Temple University Hospital.

Plaintiff's Complaint, at 1. In response to the Complaint, Temple filed the instant motion.

II. STANDARD OF REVIEW

A motion to dismiss pursuant to Rule 12(b)(1) challenges a federal court's authority to hear the case. Rule 12(b)(1) motions take one of two forms: those that attack the complaint on its face and those that attack the existence of subject matter jurisdiction in fact. See Yuksel v. Northern Am. Power Tech., Inc., 805 F. Supp. 310, 311 (E.D. Pa. 1992); Kelly v. Blake, No. CIV. A. 93-CV-0365, 1993 WL 131518, at *1 (E.D. Pa. Apr. 26, 1993). A facial attack requires the district court to take the allegations of the complaint as true in deciding whether there is subject matter jurisdiction. See Mortenson v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977); Garcia v. United States, 896 F. Supp. 467, 471 (E.D. Pa. 1995). In considering a factual attack, however, the court is free to weigh the evidence in determining its power to hear the case. See Mortenson, 549 F.2d at 891; Garcia, 896 F. Supp. at 471. The burden of proof on such a motion lies with the party asserting jurisdiction. See Thomson v. Gaskill, 315 U.S. 442, 446 (1942); Raquel v. Education Management Corp., 955 F. Supp. 433, 436 (W.D. Pa. 1996).

III. DISCUSSION

Temple argues that this Court lacks jurisdiction over Padilla's claim because it involves neither a federal question nor are the parties diverse. While Padilla's Complaint is not a model of clarity, he seems to allege that he was defamed by the conduct of Temple. As such, no basis for federal jurisdiction appears on the face of the Complaint. First, Temple correctly points out that Padilla fails to set forth federal question jurisdiction. Pursuant to 28 U.S.C. § 1331, district courts have jurisdiction over cases arising under the Constitution, law or treaties of the United States. See 28 U.S.C. § 1331. A case arises under federal law only when such creates the cause of action or "where the vindication of a right under state law necessarily turns on some construction of federal law." Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 9 (1983). Padilla's claim for state common law defamation neither arises under federal law nor relies upon the construction thereof. See Temptations, Inc. v. Wager, 26 F. Supp. 2d 740, 744 (D.N.J. 1998); Sprague v. Bulletin Co., 527 F. Supp. 1016, 1017 (E.D. Pa. 1981); see also Miller v. Norfolk & W. Ry. Co., 834 F.2d 556, 562 (6th Cir. 1987). Therefore, there is no federal question jurisdiction.

Second, Padilla's claim fails to set forth diversity jurisdiction. Pursuant to 28 U.S.C. § 1332, federal district courts have jurisdiction over matters where the plaintiff alleges complete diversity of citizenship and an amount in controversy in excess of \$75,000.00. See 28 U.S.C. § 1332. In the instant case, Padilla neither alleges, nor does an independent inquiry reveal, that the parties are completely diverse. In fact, it appears both parties are residents of Pennsylvania. Therefore, the Court does not have diversity jurisdiction over the instant matter.

Overall, Padilla's Complaint fails to set forth either federal question or diversity

jurisdiction. As such, this Court is without power to hear the instant matter and Temple's motion to dismiss is granted.

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ORDER

AND NOW, this day of March, 2000, in consideration of the Defendant, Temple University Hospital's unopposed Motion to Remand, construed by this Court as a Motion to Dismiss, (Doc. No. 6), it is ORDERED that the motion is GRANTED. The Plaintiff, Juan Padilla's claim shall be DISMISSED without prejudice.

BY THE COURT:

JAMES MCGIRR KELLY, J.